
(2016) 05 AHC CK 0348
In the Allahabad High Court
Case No : Second Appeal No. 1082 of 2014

Chandra Kanta Jawahar Lal Public C. Trust	APPELLANT
Vs	
Gautab Rohtagi	RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 168 AIC 923 : (2016) 119 ALR 109 : (2016) 3 ARC 316 :
(2016) 133 RD 716 : (2017) 1 RJ 120

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Shiv Nath Singh and Satyam Singh, Advocates, for the Appellant;
Saurabh Srivastava and Yatindra Shukla, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J.—This appeal has been preferred against the judgment dated 9.9.2014 passed in Civil Appeal No. 75/2010, Gautam Rohtagi v. Chandra Kanta Jawahar Lal Public Charitable Trust & others.

2. In Original Suit no.-13/2004, Gautam Rohtagi v. Chandra Kanta Jawahar Lal Public Charitable Trust & others, plaint case in brief was that Smt. Chandra Kanta Rohtagi was owner of the property 16/72, Civil Lines, Kanpur, who had executed registered lease dated 18.7.1975 in favour of plaintiff incorporating the terms of lease in respect of plot measuring 870 square yards (=727.40 square meters) situated in Bungalow no.-16/72, Civil Lines, Kanpur detailed at the foot of plaint. This was a lease in perpetuity on payment of Rs. 100/- per month as lease rent payable to the lessor and was registered on 19.11.1975. Said lease of perpetuity still exist. Plaintiff had been paying lease rent to Dr. Chandra Kanta Rohtagi during her life time till her death on 5.6.2003. After the grant of lease, plaintiff had permitted the defendant no.-1 (Chandra Kanta Jawahar Lal Public Charitable Trust) to use and occupy said land. At that time there were several trustees of the defendant no.-1 Trust including Chandra Kanta Rohtagi and plaintiff himself.

Most of the trustees have expired and other trustees have resigned and defendants no. 2, 3 and 4 are now trustees, who are occupying the lease land on behalf of defendant no.-1 as licensee. The lease land was in form of open land, the license of which was granted to defendant no.-1 Trust. The plaintiff had revoked the license of defendant by serving notice dated 9.9.2003 and their license was terminated on expiry of 30 days of service of notice. But the defendants had not vacated the said disputed lease land and sent incorrect reply through their counsel. The lease land given in license was in form of open plot and defendants have allowed one person to keep tea stall in the corner of it, who had illegally made temporary tin shed (Gumti). Plaintiff had filed suit for recovery of possession of said disputed lease land given to defendant as in licence, and for decree of mandatory injunction, for removal of construction raised by defendant and recovery of pendent lite and future mesne at the rate of Rs. 1,000/- per day.

3. In original suit the written-statement was filed on behalf of defendant no.-1 Trust and defendant no.-2 Sandeep Rotahgi, a trustee. By this written statement, defendants no. 1 and 2 had not admitted most of the plaint averments and denied several facts of the plaint. They had not denied the execution of registered lease-deed by earlier owner of disputed property Smt. Chandra Kanta Rohatgi in favour of plaintiff Gautam Rohtagi and pleaded that alleged lease-deed was executed just prior to promulgation of Urban Land Ceiling Act, 1976. The lease-deed was never intended by any of the parties to be implemented and acted upon, and in fact, they had never given effect to said lease-deed. No lease rent was ever paid by plaintiff to late Dr. Chandra Kant Rohtagi, and the plaintiff never took physical possession of alleged lease plot. Plaintiff never got his name mutated in records of Kanpur Nagar Mahapalika or Kanpur Development Authority. There was apprehension that Late Dr. Chandra Kanta Rohtagi may be found to be owning excess vacant land when the Urban Ceiling Land Act would be imposed, then she would lost said excess property. Therefore, lease-deed was executed with understanding to save said land from being acquired by the Government under said Act. So in spite of its execution, said registered lease was never executed. In absence of grant of any license, the point its revocation by plaintiff does not arises. Notice dated 9.9.2003 served by plaintiff upon defendants was without any substance, and correct reply thereto was sent on behalf defendant. The plaintiff's suit is wholly misconceived and is liable to be dismissed.

4. After affording opportunity of hearing to parties, the court of Civil Judge, Senior Division (Second Additional Judge Small Cause Court), Kanpur Nagar had dismissed the suit by its judgment dated 20.8.2010. In this judgment, trial court had admitted the execution of registered lease-deed dated 18.7.1975 by earlier owner of the property Smt. Chandra Kanta Rohtagi in favour of plaintiff, but held that in absence of proof of payment of lease rent to owner Dr. Chandra Kanta Rohtagi, the construction of any property over disputed land in accordance with terms of lease-deed, the absence of mutation in the name of plaintiff, it is found that said lease-deed executed by Smt. Chandra Kanta Rohtagi in favour of

plaintiff was never acted upon. Trial court had also held that in this matter documentary evidences would be more effective on oral evidences. On the basis of these find, trial court had held that plaintiff had failed to prove its case and dismissed the suit.

5. Against the judgment of trial court, Civil Appeal No. 75/2010 was preferred, which was heard and allowed by the judgment dated 9.9.2014 of Additional District Judge, Court No.-23, Kanpur Nagar. In this judgment the first appellate court had framed several points of determination including the one as to whether lease-deed dated 18.7.1975 was a validly executed deed and whether it was not acted upon and plaintiff cannot get any right on the basis of said lease-deed, and also as to whether on the basis of constructions over plot under license, the plaintiff cannot revoke or cancel the license granted to defendants. First appellate court had meticulously appreciated all the points of determination and legal points concerning them and then decided those points in favour of plaintiff and against the defendants. First appellate court had also held that it is not proved that any permanent construction was raised by defendant-licensee over disputed land and the pleadings of written-statement in this regard are not proved. Lower appellate court had also given specific finding that lease-deed dated 18.7.1975 was a valid lease-deed, which was never cancelled or annulled, and that provisions of Section 60 (b) of Indian Easement Act does not bar the revocation of license granted to defendants, because neither the construction of permanent structure is proved nor it is proved that any such structure was raised in terms of grant of license. With these find, the first appellate court had allowed the appeal, set aside the judgment of trial court and granted the relief sought by plaintiff in original suit, with direction to defendant to remove their structure from the disputed property and hand over its vacant possession to plaintiff.

6. Against the judgment of first appellate court present second appeal has been preferred by defendants (Trust) of the original suit.

7. Learned counsel for the appellants contended that had there been any intention of the lessor Late Dr. Chandra Kanta Rohtagi to grant permanent lease to plaintiff-respondent or had the lease been actually acted upon the there would have been evidences and proof of the fact that plaintiff had been paying lease rent to the lessor, he had been getting his name mutated over disputed property in records of Nagar Manapalika or Development Authority. He further contended that lease-deed was actually executed surreptitiously for saving the disputed property from being acquired by Government after coming into force of U.P. Urban Land Acquisition Act. He further contended that defendants had raised permanent construction within knowledge of plaintiff-respondent over disputed property, therefore their license cannot be revoked. He submitted that these points were not properly considered by first appellate court, who had passed erroneous impugned judgment; therefore the appeal should be admitted for being allowed.

8. These contentions were refuted by counsel for the respondent, who contended

that the execution of lease-deed in registered form is in itself the evidence of intention of the lessor. He contended that permanent lease was granted to plaintiff-respondent by Dr. Chandra Kanta Rohtagi, who had never placed any claim over this property after execution of lease-deed in question, either before or after coming into force of Urban Ceiling Act of year 1976. He further contended that unless lease-deed in question is cancelled, the right accrued to the plaintiff-respondent on its basis cannot be said to be annulled. He further contended that defendants-appellants being licensee cannot challenge the rights of grantor of license, the plaintiff. His argument was that neither there is evidence of any construction of permanent nature over disputed land, for which license was granted to defendant by plaintiff, nor it was ever pleaded in the written-statement that any construction was raised by defendant licensee under the terms of license or with permission of plaintiff. Since service of termination of license is admitted and proved fact, therefore, after the termination of license through legal notice, the status of defendant on disputed property became that of a trespasser and he is liable to be evicted by licensor, plaintiff-respondent. The judgment of lower appellate court is correct, therefore, appeal has no force and is liable to be dismissed.

9. A few important facts are evident from the pleading of the parties. It is admitted that former owner of disputed property was Dr. Chandra Kanta Rohtagi, who had willingly and deliberately granted permanent lease of this property in favour of plaintiff-respondent Gautam Rohtagi by registered lease-deed dated 18.7.1975, and thereafter never challenged said lease-deed or the right accrued to plaintiff-respondent on the basis of said document. The defendants-appellants had never denied specifically in their written-statement that plaintiff had not granted any license of disputed land to them. The main thrust in the written-statement was on the point that lease-deed executed by Late Dr. Chandra Kanta Rohtagi was never intended to be acted upon and was never acted upon. But it is pertinent to note that there was specific averment in plaint that plaintiff had granted license of disputed property to defendants and given its possession to them and this fact was not specifically denied. Most of the plaint averments were vaguely not admitted without any specific denial, especially on point of license; the legal effect of which is their specific admission of plaint case. In paragraph-3 of the plaint, plaintiff had specifically pleaded as under:-

"That after the grant of lease, the plaintiff had permitted the defendants-Chandra Kanta Jawahar Lal Public Charitable Trust to use and occupy the aforesaid land and at that time late Dr. Chandra Kanta Rohatgi, Late Dr. Rajendra Rohatgi, Shri Mahendra Rohatgi, Shri Gautam Rohatgi, Dr. Ramesh Chandra Vaish and Late Babu Devendra Swaroop, Dr. Sarojni Rohatgi and late Dr. Surender Rohatgi were the trustees but most of the trustees have expired and other trustees resigned and the defendants no. 2, 3 and 4 are known trustees who were occupying the lease land as licensees. Late Mahendra Rohatgi expired during the pendency of the suit and he was only a trustee in the defendant no.-1."

10. In its reply, the defendant-appellants had written in paragraph 5 of their written statement as under:-

"Para 3 of the plaint is denied except that Dr. Chandra Kanta Rohatgi, Late Dr. Rajendra Rohatgi, Dr. Mahendra Rohatgi, the plaintiff Gautam Rohatgi, Dr. Ramesh Chandra Vaish and Late Sri Devendra Swaroop, Late Dr. Sarojni Rohatgi and Late Dr. Surendra Rohatgi were trustees of defendant no.-1 for considerable time till their death or resignation as the case may have been. Both plaintiff and Dr. Ramesh Chandra Vaish resigned from the Trust on 8.7.1994 and 02.03.2001 respectively. The plaintiff throughout never paid in lease rent nor demanded any license fee. No license fee as alleged was at all payable by the defendant no.-1 to the plaintiff. The plot in suit always remained part of premises no.-16/72, Civil Lines, Kanpur and the plaintiff was never given physical possession thereof."

11. Although paragraph-4 of the plaint states that plaintiff has revoked the license of defendant vide notice dated 9.9.2003 and in its reply defendant had at one place in paragraph-6 of their written-statement that in absence of grant of any license, the question of its revocation does not arise; but in subsequent paragraph defendants had admitted the service of legal notice dated 9.9.2003, sent by plaintiff to them and their reply of notice. Thus, in spite of denying whole of the paragraph-4 of the plaint, most of its parts were admitted by defendant in their reply and a superficial remark about absence of grant of any license was mentioned. But except this there was, in fact, no specific denial of specific averment of plaint case that plaintiff had granted the license to defendant no.-1 Trust and permitted them to occupy the aforesaid land as licensee; and the specific averment in that regard as mentioned in plaint remained uncontroverted, undenied and unanswered. The non-denial of such specific plaint averments has effect of admission of plaint case. Neither in evidences nor during argument, the grant of license by plaintiff to defendant was challenged. This license was not specifically denied and had been found admitted and proved; and for that reason this plea of Section 60(b) of non-revocation of license because of raising of permanent construction by defendant was taken and pressed before lower courts and before this court. Thus, this fact is proved that plaintiff has granted license of disputed property to defendant. This fact was never denied by trial court in its judgment and this fact was decided in favour of plaintiff-appellant by first appellate court. Grant of license by plaintiff to defendant is also proved from the evidences adduced in this case, as has been held by first appellate court and finding of fact in this regard, which is based on proper appreciation and scrutiny of evidences, is not erroneous, so such finding cannot be interfered by this court in second appeal.

12. So far the argument of learned counsel for the appellants regarding the intention of the licensor Dr. Chandra Kanta Rohatgi and licensee plaintiff-respondent at the time of execution of registered lease-deed in question is concerned, it is a fact that intention of the parties can be derived either from the evidences or from their acts and circumstances. In present matter, licensor Dr.

Chandra Kanta Rohatgi had already died before institution of original suit. Although, the plaintiff-respondent had never taken step to get his name mutated in records of Nagar Mahapalika, Kanpur or Kanpur Development Authority or had not constructed any residential building over this property as mentioned in the lease-deed, but the pertinent question is as to whether these omissions can be proof of intention of the parties regarding non acting upon of lease-deed dated 18.7.1975 in future. This fact was not meticulously considered by trial court, which had superficially considered the non-mutation of name of plaintiff and no evidence of proof of lease rent to lessor and such other things; but it appears that said trial court had not taken note of other very important and pertinent facts and lost sight of them which were later on considered by the first appellate court. The lower appellate court had discussed the provisions of Sections 107, 108, 111 of the Transfer of Property Act, relating to how leases are made, what are rights and liabilities of lessor and lessee and how a lease can be terminated. These facts were properly discussed by first appellate court which had held that registration in itself is sufficient proof for valid execution of lease-deed of immovable property. Considering the terms of lease, first appellate court had rightly quoted the condition no. (e) in the lease-deed dated 18.7.1975, which reads that "(e) That the lessor shall only be entitled to realise rent from the lessee and shall never be entitled to terminate the lessee rights of the demised plot". This court has rightly inferred from this condition that intention of the lessor was never to terminate the rights of lessee regarding this lease. In this lease-deed there was no term that lessor will ever re-enter disputed property, which was considered by lower appellate court in impugned judgment. It was held that lessor had permanently transferred her rights and never admitted the handing over back of possession of property to her, and there is no reason to accept that the lease-deed in question was not acted upon or they had any such intention. On the point of payment of lease rent, the lower appellate court had held that even if lease rent was not paid, the lessor cannot re-enter property in terms of lease unless lease is cancelled or terminated, because it was leased in perpetuity. These find of lower appellate court based on facts, circumstances, terms of lease and the evidences, and the find in this regard are apparently correct and acceptable without any infirmity. The intention of a person can properly expressed by him only. In present matter, plaintiff had explained his intention by his evidences. His intention to act upon lease is proved from the fact that after acceptance of lease, he had not handed over its possession as licensor to defendant-licensees. The intention of the lessor Dr. Chandra Kanta Rohatgi was best known to her, but she had died before initiation of the suit in year 2003. It is pertinent to mention that from the time of execution of registered lease-deed dated 18.7.1975 till her death in year 2003, for about 28 years, she had never challenged the lease-deed in question and nor made any attempt to cancel or terminate it and had never acted in a way to express her dissatisfaction either from alleged non-payment of lease rent or from any other act of plaintiff-respondent. She had never done any act to show her intentions different from the terms written in lease-deed in question.

13. The main defence of the defendant-appellant was that intention of execution of lease-deed by lessor Dr. Chandra Kanta Rohtagi was the defeating prospective Urban Land Ceiling Act and for saving the property. But, in fact, there is no evidence of these facts. After meticulously scrutinising the legal provisions as well as pleadings and evidences in light of contentions of the parties, the lower appellate court had given finding of fact in impugned judgment in favour of plaintiff and against the defendants. Thus the finding of lower appellate court point this point are found correct which are hereby confirmed.

14. Although, the trial court had given finding that plaintiff had failed to prove the plaint case, but its finding are superficial and on certain points incorrect and inadmissible, which were rightly reversed by the first appellate court. It is admitted case that defendant-appellants had raised certain construction over disputed property. Plaintiff had pleaded this fact in plaint stating them to be the temporary constructions, but the defendants had pleaded them as construction of permanent nature; but the constructions over disputed property are proved to have been raised by defendant-appellants; but on this point vague and uncertain find were given by trial court when it has held that it was responsibility of plaintiff to prove those constructions either through court Amin or through advocate-commissioner in form of report and map. The trial court had lost sight of the fact that said constructions are not disputed. Both the parties had admitted that those disputed constructions had been raised by defendants. The only dispute was as to whether those constructions were in accordance with the terms of grant of license given by plaintiff to defendant or not. This point was neither discussed nor decided by trial court; but the lower appellate court had meticulously discussed this point and held that the construction present on spot is tea stall, which is temporary in nature. Lower appellate court had discussed the provisions of Section 60 of Indian Easement Act and held that in this matter license was revocable as neither construction of permanent nature was raised by defendants nor disputed constructions were raised in terms of grant of license.

15. The alternative argument of learned counsel for the appellant was that the defendant-appellant had raised construction of permanent nature on his expenses, therefore, provisions of Section 60 of the Indian Easement Act, 1882 bars the right of plaintiffs, the grantor of license, to revoke license. He submitted that these facts were not properly appreciated by first appellate court, who allowed the appeal and passed erroneous judgment, which should be quashed.

16. These contentions were refuted by learned counsel for the respondent, who submitted that under Section 60 of the Indian Easement Act, the bar of revocation of license is only when the work of permanent nature was done in accordance with license and not otherwise, but in present case it is not proved that acting upon the license alleged construction was raised. Therefore when first appellate court had appreciated these things properly and passed impugned judgment correctly, then appeal should be dismissed.

17. It is proved fact that plaintiff was grantor of the license of the disputed

property to defendant-licensee. It is also admitted that after arising of cause of action, plaintiff had revoked such license. The point of determination in this matter was as to whether constructions were raised by defendant-appellant were of permanent character, and if so, then whether those constructions were raised in accordance with terms of license and acting upon the license. Section 60 of the Indian Easement Act reads as under:-

"60. License when revocable.- A license may be revoked by the grantor, unless-

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution."

18. It has to be considered that whether for raising such alleged construction of permanent character, the license of plaintiff cannot be revoked.

19. As discussed in Section 60 (b), a license may be revoked by the grantor of license, unless the licensee has executed a work of permanent character, acting upon the license. "Acting upon the license" means acting upon right granted to do upon premises of grantor something which would have been unlawful in absence of such right. The construction of permanent works itself would not render a license irrevocable unless such construction had been made by the licensee in pursuance of the license granted to him. Construction of building on land, when the license was not granted for building purposes, would not attract the provisions of Section 60 and render license irrevocable.

20. In present matter, from the adduced evidences, defendant appellant could not prove that he had raised the constructions on disputed property in accordance with the terms of license or acting upon the license. Even no such specific plea was taken in written-statement. Such license cannot impliedly attracts the permission to raise building or any permanent construction. A licensee acting upon the license, cannot execute a work of permanent injunction without specific direction or grantor of license for this purpose. Therefore, it is found that those constructions are not in accordance with terms of grant of license and cannot be said that acting upon the license, the defendant-licensee had executed work of permanent character.

21. The first appellate court had meticulously scrutinised the available evidences including those points, which had lost the sight of trial court and gave finding that disputed construction was not of permanent character and was raised against the terms of license and without permission of grantor of license, the plaintiff.

22. It has been admitted fact, which is proved from evidences that plaintiff had revoked license of defendant. Revocation of license by plaintiff in this case is not disputed fact. The contention of appellant side was that this license was terminated without satisfactory reasons. This contention is unacceptable. The plaintiff was grantor of the license and he could legally revoke the license any

time unless bar mentioned in sub-section (a) or (b) of Section 60 of the Indian Easement Act, 1882 does not come into operation. As has been held earlier that bar of Section 60 (a) or (b) of the Indian Easement Act is not applicable in this matter. It is settled legal position that a bare license can always be revoked by grantor. A license unlike a contract, creates no mutual obligation and rights between the parties and it may be revoked under Section 60 above except when it is one which falls within the exception mentioned in this provision. In present matter, the case of revocation of license does not fall within exception of Section 60, as has been discussed above. Mere serving of notice of termination of license is sufficient to terminate the license, as has been done by the plaintiff-respondent in this matter.

23. On the basis of above discussion, it is found that there is no factual or legal error in the judgment of first appellate court, when it had allowed the appeal, set aside the judgment of trial court and decreed the original suit. The find of first appellate are found correct, which are hereby confirmed.

24. The disputed point in this matter has been as to whether lease-deed dated 18.7.1975 was executed by late Dr. Chandra Kanta Rohatgi without intention to act upon it, and whether it was not acted upon, and also as to whether on the basis of constructions over plot under license, the plaintiff cannot revoke or cancel the license granted to defendants. These are not questions of law but are questions of facts, that could be decided on basis of evidences, as has been done by the lower court. The findings of facts in this regard, as given by first appellate court, are apparently correct and acceptable. Such findings cannot be interfered in second appeal by re-appreciation of evidences.

25. On examination of the reasoning recorded by the learned first appellate court in first appeal, I am of the view that judgment in civil appeal as above is well reasoned, and are based on proper appreciation of entire evidences on record. In this matter dispute related to such fact that could have been decided on basis of evidence, as it had been decided by first appellate court. No perversity or infirmity is found in finding recorded by the first appellate court to warrant interference through this appeal. No question of law, much less a substantial question of law, was involved before this Court. None of the contentions of the learned counsel for the appellants-defendants can be sustained.

26. Accordingly, this appeal is dismissed.